

**Montana Department of Corrections
and
Montana Secretary of State
Memorandum of Understanding**

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SEP 26 2005

DEPT. OF CORRECTIONS
LEGAL SERVICES DIVISION

AGREEMENT FOR TRANSFER AND USE OF INFORMATION

Section 1. Parties to the Agreement.

1.1 This agreement for the transfer and use of information ("this Agreement") is entered into by and between the Montana Secretary of State, Elections Bureau ("the Recipient") and the Montana Department of Corrections ("the Supplier").

Section 2. Purpose of the Agreement.

2.1 The Recipient is a governmental agency that is authorized to use for its official duties certain information gathered by the Supplier, in accordance with Sections 13-2-402 (4) and 13-1-111 (2), Montana Code Annotated and federal Help America Vote Act of 2002;

116 STAT. 1710 PUBLIC LAW 107-252—OCT. 29, 2002
SEC. 303

(2) COMPUTERIZED LIST MAINTENANCE. —

(A) IN GENERAL. —The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).

(ii) For purposes of removing names of ineligible voters from the official list of eligible voters— (I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status;

The Supplier will provide a list of persons serving felony sentences in a penal institution to the Recipient as requested by the Recipient. Recipient will use this information to create an official list of eligible voters. Specifically Recipient will use that information to verify the incarceration status of persons sentenced or subject to the custody of, or supervision by, the Supplier, and to verify voter eligibility for those persons. The purpose of this Agreement is for the Supplier to transfer those certain data elements or information described in Section 4 of this Agreement to the Recipient for the Recipient's specific intended use.

2.2 The Recipient agrees that it will only use the information transferred pursuant to this Agreement for the purposes described in paragraph 2.1.

Section 3. Limited license granted.

3.1 The information transfer that is the subject of this Agreement creates only a limited license for the use of the information transferred, and does not give the Recipient any ownership interests in the information itself. The license granted extends only to the Recipient's use as

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described in this Agreement

3.2 The information that is transferred pursuant to this Agreement may only be used for the expressed purpose as originally intended.

3.3 The Recipient may not disclose confidential information transferred pursuant to this Agreement to any other persons who are not the employees of SOS or associated with the voter registration process without the express, written consent of the Supplier. The Supplier may grant or withhold that consent in its sole discretion. The Supplier may impose reasonable conditions on the Recipient and the agent regarding confidentiality as a condition of granting consent for the agent's access to the transferred information.

Section 4. Description of information being transferred.

4.1 The public information being transferred pursuant to this Agreement is the offender's Department of Corrections' identification number, the offender's full name, the offender's date of birth, the county of sentence, and the offender's correctional status, based on information stored in the Montana Department of Corrections' offender database. The confidential information being transferred pursuant to this Agreement is the last four digits of the offender's social security number and the offender's Montana driver's license number (if available).

4.2 The information will be transferred to the Recipient via **File Transfer Protocol (FTP)**.

Section 5. Non-disclosure of confidential information.

5.1 Recipient agrees that it will take all necessary steps to protect confidential information transferred under this agreement from unauthorized disclosure.

5.2 The Recipient acknowledges that it and its agents and employees may be subject to state and/or federal civil and criminal penalties in the event it makes unauthorized disclosures of legally protected information.

5.3 In the event a third party attempts to compel by way of legal process the disclosure of any confidential information transferred pursuant to this Agreement, the Recipient agrees to immediately notify the Supplier of that fact. The Recipient must reasonably cooperate with the Supplier in the event the Supplier elects to resist that legal compulsion. The Recipient, however, is not required to (although it may do so at its own expense) retain counsel to resist that legal compulsion, once the Recipient has notified the Supplier as provided by this paragraph.

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Section 6. Indemnity.

- 6.1 The Recipient agrees to defend, indemnify and hold harmless the Supplier from any claims arising out of the transfer of the information that is the subject of this Agreement, or arising out of the use, misuse or disclosure by the Recipient of that information.
- 6.2 The Recipient agrees to indemnify the Supplier for any losses or damages arising out of Recipient's violation of any of the terms of this Agreement.

Section 7. No warranty regarding the information.

- 7.1 Although the Supplier uses reasonable care in collecting the data or information in its records, the Supplier makes no express or implied warranty of the accuracy of the information that is being transferred to the Recipient. The Recipient acknowledges that it takes the information "as is", and that there is no express or implied warranty of accuracy or fitness for any purpose associated with the use of the data or information.

Section 8. Consideration.

- 8.1 The consideration for this Agreement consists of the mutual promises and obligations of the parties, as reflected in this Agreement.
- 8.2 In addition to the consideration described in this Section, the Supplier intends to provide the data free of charge.

Section 9. Term of the contract.

- 9.1 This Agreement shall automatically renew annually. Either party may seek to negotiate the terms of this agreement upon 60 days' written notice to the other.

Section 10. Entire document and modifications.

- 10.1 Except as provided by paragraph 10.2, this Agreement constitutes the entire agreement between the Supplier and the Recipient with respect to the information transfer that is the subject of this Agreement. No other statements, understandings or promises serve to modify or explain the terms of this Agreement.
- 10.2 Only a document or writing, specifically referred to and identified as an exhibit to this Agreement, and attached as an exhibit to this Agreement, is incorporated by reference in this Agreement. Such an exhibit does not need to be signed by the parties, but must be attached to this Agreement at the time of signing by both parties.
- 10.3 This Agreement may not be modified, except in a writing signed by both parties.

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Section 11. Good faith and further cooperation.

11.1 The parties agree to act in good faith with respect to one another in the performance of this Agreement.

11.2 The parties agree to further cooperate as reasonably necessary to carry out the provisions of this Agreement.

11.3 The parties designate the following individuals as their respective points of contact for the purposes of communications regarding this Agreement:

11.3.1 For the Supplier:

Statistics and Data Quality Manager
1539 11th Ave.
PO Box 201310
Helena MT 59620
(406) 444-3991
(406) 444-4920 fax

11.3.2 For the Recipient:

Bureau Chief
Information Technology Bureau
Montana Office of the Secretary of State
P.O. Box 202801
Helena, MT 59620-2801
406-444-6649
Fax: 406-444-3976

Section 12. Choice of law and venue.

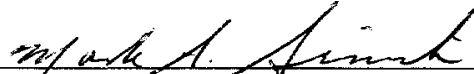
12.1 The Supplier and the Recipient agree that in the event of litigation concerning the terms of this Agreement, this Agreement will be construed in accordance with Montana law and venue will be in the First Judicial District of Montana, Lewis and Clark County.

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Section 13. Execution of counterpart originals.

13.1 This Agreement will be executed in four counterpart originals, any and all of which are to be deemed an "original" of this Agreement. The person executing this Agreement on behalf of the Recipient specifically represents to the Supplier that the person is authorized to act on behalf of the Recipient and to bind the Recipient in contract.

Approved for the Recipient:

by: 
for Brad Johnson, Secretary of State


date: 9/23/05

Approved for the Supplier:

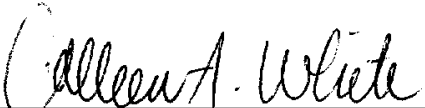
by: 
Bill Slaughter, ~~Director~~

date: 9/27/05

Reviewed for form and content:

by: 
H. Elwood English, Attorney for the Recipient

date: 9/23/05

by: 
Colleen A. White, Attorney for the Supplier

date: 9/27/05